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In re Application of WERNHAM et al.
Application No.: 10/539,623
PCT No.: PCT/EP03/51068
Int. Filing: 18 December 2003
Priority Date: 19 December 2002
Attorney Docket No.: 4590-418
For: AN OPTICAL FILTER

: DECISION ON PETITION
: UNDER 37 CFR 1.47(a)

This is a decision on applicant's renewed petition under 37 CFR 1.47(a), filed in the United States Patent and Trademark Office (USPTO) on 08 May 2008 to accept the application without the signature of joint inventor, Denny Wernham.

BACKGROUND

On 14 February 2006, a Notification of Missing Requirements (FORM PCT/DO/EO/905) was mailed to applicant indicating *inter alia*, that an oath or declaration in accordance with 37 CFR 1.497(a) and (b) and the surcharge for filing the oath or declaration after the thirty month period was required.

On 14 September 2006, applicant filed a petition along with a declaration, executed by the joint inventors on behalf of the nonsigning inventor. The petition under 37 CFR 1.47(a) in an attempt to satisfy the requirements of 35 U.S.C. 371(c)(4) requested the acceptance of the application without the signature of inventor, Denny Wernham alleging that Mr. Wernham refuses to sign the application. On 01 December 2006, a decision dismissing the petition was mailed indicating that Petitioner had failed to demonstrate that the non-signing inventor refused to sign the application papers.

On 18 January 2007, a renewed petition under 37 CFR 1.47(a) was filed with the USPTO. On 14 June 2007, a decision dismissing the renewed petition was mailed indicating that applicant had not yet demonstrated that the non-signing inventor refused to sign the application papers.

On 14 August 2007, a renewed petition under 37 CFR 1.47(a) was filed with the USPTO. On 8 February 2008, applicant was advised that the declaration did not identify the citizenship of the non-signing inventor and thus, was defective.

On 08 May 2008, applicant submitted a newly executed declaration.

DISCUSSION

A petition under 37 CFR §1.47(a) must be accompanied by (1) the fee under 37 CFR §1.17(h), (2) factual proof that the non-signing joint inventor(s) refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the non-

signing inventor(s), and (4) an oath or declaration by each available joint inventor on his or her own behalf and on behalf of the non-signing joint inventor(s).

Petitioner previously satisfied Items (1), (2) and (3).

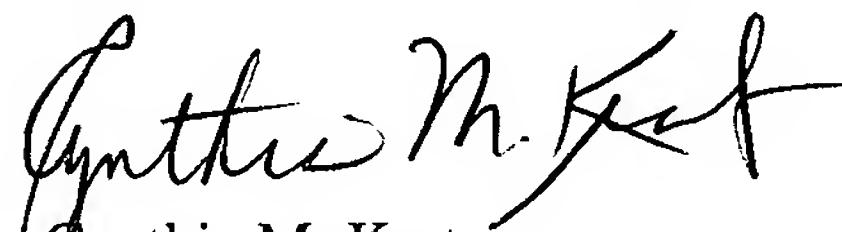
With respect to Item (4) above, the declaration submitted on 08 May 2008 appears to be in both the French and English languages. As stated in 37 CFR 1.69(b), unless the text of any oath or declaration in a language other than English is in the form provided by the Patent and Trademark Office..., it must be accompanied by an English translation together with a statement that the translation is accurate. See also MPEP 602.06. It is suggested that applicant employ USPTO Form PTO/SB/105 or that the newly executed declaration be accompanied by a statement of counsel that the translation is accurate.

CONCLUSION

The petition under 37 CFR §1.47(a) is **DISMISSED**.

Applicant has **TWO (2) MONTHS** from the mail date of this decision within which to reply. Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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